

Chapter 10 – Davis Bacon Requirements

This chapter deals with the Davis Bacon Requirements for federal projects; however, you should refer back to the procurement chapter for the applicable procurement methods and requirements. Davis Bacon requirements do not apply to contracts for rehabilitation or new construction of a residential property containing less than twelve (12) HOME-assisted units or less than eight (8) units in a CDBG undertaking. For Migrant Farm Worker Housing CDBG projects, the size and number of persons occupying each unit needs to be determined before the project can be assumed to be Davis Bacon. Additionally, all CDBG funded emergency shelters and youth shelters are required to pay Davis Bacon prevailing wage rates.

Labor Standards Acts

The implementing regulations for labor standards requirements are:

- 1. 21 CFR Parts 1, 3, 5, 7**
- 2. 29 CFR Parts 1, 3, 5.**

The three basic statutes governing labor standards requirements are:

- 1. Contract Work Hours and Safety Standards Act*

The Contract Work Hours and Safety Standards Act requires that workers receive “overtime” compensation at a rate of 1 1/2 times their regular hourly wage after they have worked 40 hours in one week. It applies to all construction contracts issued under the CDBG and HOME programs

- 2. Copeland “Anti-Kickback” Act*

The Copeland “Anti-Kickback” Act requires that workers be paid at least once a week, without any deductions or rebates except permissible deductions. Permissible deductions include taxes, deductions the worker authorizes in writing, and those required by court processes. The Act also requires contractors to maintain payroll records and submit weekly statements of compliance to the contracting agency. Payment to employees must be in cash or negotiable instrument payable on demand. It applies to all contracts covered by Davis-Bacon. Again, this only applies to contracts for rehabilitation or new construction of a residential property containing more than twelve (12) HOME-assisted units or more than eight (8) units in a CDBG undertaking.

- 3. Davis Bacon Act*

The Davis-Bacon Act requires that workers receive no less than the prevailing wages being paid for similar work. Prevailing wages are computed by the U. S. Department of Labor (DOL) and are issued in the form of a federal wage decision for each classification of work.

Davis-Bacon wage rate provisions apply when CDBG or HOME funds are involved with equipment purchases that require installation and installation

involves “more than an incidental amount” of construction work. Davis-Bacon wage rate provisions do not apply to equipment purchases where the cost of installation is only an incidental amount of construction activity.

Wage provisions apply to all construction, alteration or repair contracts over \$2,000 **except** for:

- (a) Contracts for rehabilitation or new construction of a residential property containing less than twelve (12) HOME-assisted units or less than eight (8) units in a CDBG undertaking.
- (b) Apprentices may work at less than the prevailing rates, if they are registered in a bona fide apprenticeship program approved by the Department of Labor through its Bureau of Apprenticeship and Training or recognized State Apprenticeship Council. Apprenticeship certificates or documentation must be supplied by contractors with payroll forms.
- (c) Trainees may be permitted to work at less than prevailing rates, if they are employed under a program that has been approved by the Department of Labor.
- (d) Force account employees of a state or political subdivision (other than a public housing agency), including situations where one political subdivision contracts with another using such employees, may work at their standard rate of pay, even if less than prevailing wage rates.

Please note that residential developments of five or more stories are subject to a commercial Davis-Bacon wage decision. Public facilities (such as emergency shelters) and developments of less than five stories that involve significant commercial development may also be subject to the commercial wage decision. All other residential developments should be subject to the residential wage rates, which are significantly lower than commercial wage rates. Wage decisions are issued by U.S. Department of Housing and Urban Development for HOME projects and the Indiana Department of Commerce for CDBG projects; therefore, the respective agencies will determine based on the type of project and type of construction work to be done the actual wage decision that you will receive. However, it is important to request a wage decision early in the planning stages of project development in order to estimate the financial impact of the Davis-Bacon wages.

Outline of the Davis Bacon Requirements

1. Submit “Notice of Labor Standards Officer” once award agreement is received (Exhibit A).
2. Request Wage Decision from IHFA (Exhibit B)
3. Prepare Bid Documents and the following must be physically included in the bid documents:
 - ◆ Federal Labor Standards Provisions - HUD Form 4010 (Exhibit C); and
 - ◆ The Wage Decision

4. Follow the procurement standards outlined in Chapter 12.
5. Maintain a list of those entities/persons that request a bid packet.
6. A Pre-Bid Conference should be held by the recipient/architect approximately three weeks prior to bid opening. At this conference you should briefly go over the Davis Bacon requirements and the construction/rehabilitation that needs to be completed; therefore, allowing for the entities to submit a competitive bid. Keep minutes of this conference for review by your IHFA Compliance Specialist.
7. Wage Decision Update
 - a. Seven (7) days prior to the execution of a contract for a HOME/RHTC development, you must update your wage decision to ensure that the proper wage decision is included in the contract. You should submit Exhibit D via facsimile or email to your IHFA Compliance Monitor.
 - b. Ten (10) days prior to bid opening, submit to your IHFA Compliance Monitor via facsimile Exhibit E to verify that the wage decision has not modified. In the event that the contract is not awarded within 90 days of bid opening, the wage rate must again be verified and is subject to modification. If there is a change in the wage decision, you must give the wage decision to each entity/person that received a bid packet.
8. Open all bids publicly – and maintain a log of bids as they are opened.
9. Prepare bid tabulation
10. Retain copy of minutes of bid opening
11. Submit “Verification of Contractor and Subcontractor Eligibility” (Exhibit F)
12. Award contract at public meeting. Retain copy of minutes. Include in the contract:
 - ◆ Federal Labor Standards Provisions - HUD Form 4010 (Exhibit C);
 - ◆ Wage Decision;
 - ◆ Federal Contract Provisions (Exhibit G); and
 - ◆ Davis Bacon Contract Provisions (Exhibit H)
13. Submit “Notice of Contract Award.” (Exhibit I)
14. Contact IHFA to schedule a Pre-Construction Conference – then submit Exhibit I - Notice of Pre-Construction Conference to your IHFA Compliance Specialist
15. Pre-Construction Conference (given by your IHFA Compliance Inspector)
 - ◆ Every contractor/subcontract must be present
 - ◆ The General Contractor will sign off on the Pre-Construction Conference Packet
 - ◆ Sign-in sheet must be kept as well as minutes – forward a copy of both to IHFA
16. Volunteers – if you plan on using volunteers, it must be approved by IHFA. In your request, you must include the following:
 - ◆ The individual must truly be a volunteer
 - ◆ The individual cannot receive compensation
 - ◆ The individual can be paid for out of pocket expenses (hotel, travel, etc.)
 - ◆ The individual can not be employed as a contractor on the project and volunteer timeThe use of volunteers must be approved in writing by IHFA.
17. Submit “Notice of Start of Construction” (Exhibit J)
18. Weekly, check Contractor’s and Subcontractor’s weekly payrolls against wage decision to ensure compliance with prevailing wage. In order to assist you with this, a monthly payroll report summary has been included as Exhibit K.
19. Conduct interviews of Contractor’s and Subcontractor’s employees (Form will be given to you with the Pre-Construction Conference Packet)
20. Submit “Notice of Completion/Final Inspection” (Exhibit L)
21. Submit “Final Wage Compliance” (Exhibit M)

Pre-Construction Conference Checklist

The following will outline the materials that will be covered at the Davis Bacon Pre-Construction Conference.

- A. General Information regarding Contractor/Subcontractors
- B. Equal Employment Opportunity
 - 1. Title VI – Civil Rights Act of 1964
 - 2. Section 504 – Rehabilitation Act of 1973
 - 3. Age Discrimination Act of 1975
 - 4. Executive Order 12138: Women Business Enterprise Policy
 - 5. Executive Order 11063
 - 6. Executive Order 11246, as amended by Executive Order 11375
 - 7. Section 3: Housing and Urban Development Act of 1968
 - 8. Minority/Women Business Enterprises
 - 9. Affirmative Action Program
 - 10. OFCCP Subcontract Notification
 - 11. Monthly Employment Utilization Report
 - 12. Employer Information Report
 - 13. Other Requirements
- C. Labor Standards
 - 1. Ineligible Contractors and Subcontractors
 - 2. Overtime
 - 3. Copeland Anti-Kickback Act
 - 4. Posters at the Construction Site
 - 5. Other Labor Standards Requirements
- D. Davis Bacon Requirements
 - 1. General Requirements
 - 2. Workers Not Listed on the Wage Decision
 - 3. Classifications
 - 4. Apprentices
 - 5. Weekly Payroll Requirements
 - 6. Fringe Benefits
 - 7. Self-employed Owners
 - 8. Disputes
 - 9. Compliance

E. Forms you will receive at the Pre-Construction Conference

1. Federal Labor Standards Provisions (HUD-4010)
2. Section 3 Report
3. OFCCP Subcontract Notification
4. Monthly Employment Utilization Report
5. Employer Information Report (EEO-1)
6. Civil Rights Poster (Equal Employment Opportunity is the Law)
7. Fair Housing Poster (Equal Housing Opportunities)
8. Certificate of Accessibility
9. Federal IOSHA poster
10. Federal Polygraph poster
11. Secretary of Labor's Wage poster (Notice to Employees)
12. Indiana Code Wage Deductions
13. Form WH-347
14. Form WH-348
15. Record of Employee Interview (form HUD-11)

Davis Bacon Exhibits

- A Notice of Labor Standards Officer
- B Request for Wage Decision
- C Federal Labor Standards Provisions (HUD Form 4010)
- D 7-Day Wage Decision Verification – Only applicable for HOME/RHTC developments in which the contractor was identified in the initial application to IHFA.
- E 10-Day Wage Decision Verification
- F Verification of Contract and Subcontractor Eligibility
- G Federal Contract Provisions
- H Davis Bacon Contract Provisions
- I Notice of Pre-Construction Conference
- J Notice of Start of Construction
- K Monthly Payroll Report Summary
- L Notification of Completion/Final Inspection
- M Final Wage Compliance Report